SUPREME COURT, U. S.

JUL 11 1974

MICHAEL RODAK, JR., CLE

IN THE

Supreme Court of the United States

October Term, 1974

No. 73-2010

MARGARET RUTH PETRAGLIA, FRANK ANTHONY PULEO, NELLIE MARY PULEO,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND APPENDICES

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above-entitled case on June 11, 1974.

Citations to Opinions Below

The district court's memorandum and Adjudication is not yet reported and is reprinted in Appendix A, *infra*. The order of the Court of Appeals is not yet reported and is reprinted in Appendix B hereto, *infra*.

Jurisdiction

The judgment of the Court of Appeals was entered June 11, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Question Presented

1. Whether Petitioners' convictions of conspiracy represent a duplication of their convictions of violating 18 U.S.C. 1955 and require that the conspiracy convictions be reversed.

Statutes Involved

The statutory provisions involved are set forth in Appendix C, *infra*.

Statement of the Case

On March 29, 1972, the Petitioners here and the Petitioners at No. 73-1412, *Grosso, et al. v. United States,* were indicted for conspiracy to violate 18 U.S.C. 1955 and for a substantive violation of 18 U.S.C. 1955. This indictment was based upon a series of court-authorized wire interceptions of telephones subscribed to by various defendants.

A motion to suppress was filed as a result of which certain evidence was suppressed for failure to follow the authorization procedure required by 18 U.S.C. 2516.

On April 30, 1973, the charges against Petitioners were severed while Petitioners at No. 73-1412 went to trial. On May 11, 1973, the jury returned a verdict of guilty against those individuals on all counts.

Petitioners here agreed to proceed non-jury on stipulated facts so as to avoid a prolonged jury trial.

After considering all of the testimony introduced at the trial of the Petitioners at No. 73-1412 and the stipulation of counsel, the Court, on November 26, 1973, adjudged defendants guilty on all counts.

On December 21, 1973, the following sentences were imposed: Margaret Ruth Petraglia was sentenced to three years imprisonment on both counts of the indictment, the sentences to run concurrently, and fined $5,000.00 on Count One and $10,000.00 on Count Two and to stand committed until paid. Nellie Mary Puleo was sentenced to three years imprisonment, to be suspended after serving four months, and then placed on three years probation and fined $5,000.00. The same sentence was imposed on Count Two to run concurrently with Count One and a $5,000.00 fine was also imposed on Count Two. Frank Anthony Puleo was sentenced to three years imprisonment with the sentence suspended and placed on three years probation and fined $5,000.00 on Count One and, in addition, was fined $2,000.00 on Count Two.

Reasons for Granting the Writ

The Court granted certiorari in *Ianelli, et al. v. United States,* No. 73-64 on May 28, 1974, on the question of whether it is improper to prosecute and punish under both 18 U.S.C. 371 and 18 U.S.C. 1955 in light of "Wharton's Rule."

In reply to the Court's invitation to respond to the petition in *Grosso, et al. v. United States,* No. 73-1412, the Solicitor General admitted that the issue is the same as that presented in *Ianelli v. United States* and suggested that it would be appropriate to defer disposition of the petition in 73-1412 until after the decision in *Ianelli.*

The Court may wish to defer disposition of this petition until after the decision in *Ianelli v. United States* or it may wish to grant the petition now and join it with *Ianelli*.

Conclusion

It is respectfully submitted that certiorari should be granted as to the question raised by the petition because of the Court's grant of certiorari in *Ianelli* on the same question.

Respectfully submitted,

JAMES K. O'MALLEY,
1122 Frick Building,
Pittsburgh, Pa. 15219,
(412) 281-2855,
Attorney for Petitioners.

APPENDIX A

Opinion of District Court Below

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 74-1078/1079/1080.

UNITED STATES OF AMERICA,

v.

ANTHONY MICHAEL GROSSO, JOSEPH CARMEN GROSSO, JR., SAMUEL JAMES GROSSO, MARGARET RUTH PETRAGLIA, FRANK ANTHONY PULEO, NELLIE MARY PULEO, PHILOMENA VIOLA.

FRANK ANTHONY PULEO,	Appellant in No. 74-1078.
NELLIE MARY PULEO,	Appellant in No. 74-1079.
MARGARET RUTH PETRAGLIA,	Appellant in No. 74-1080.

(D. C. Crim. No. 72-102)

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

Submitted Under Third Circuit Rule 12(6) June 10, 1974.

Before Staley, Gibbons and Weis, *Circuit Judges.*

Richard L. Thornburgh, United States Attorney, Suite 816, Chatham Center Office Building, Pittsburgh, Pennsylvania 15219.

James E. Roark, Michael P. Lesniak, Special Attorneys, United States Department of Justice, Organized Crime and Racketeering Section, Pittsburgh Strike Force, Attorneys for Appellee.

James K. O'Malley, Esq., 1122 Frick Building, Pittsburgh, Pennsylvania 15219, Attorney for Appellants.

JUDGMENT ORDER.

Appellants contend:

(1) That the wire interception was improperly authorized. We reject this contention on the authority of *United States v. Chavez*, 42 U.S.L.W. 4660 (U.S. May 14, 1974).

(2) That Wharton's Rule applies to this case. We reject this contention on the authority of *United States v. Iannelli*, 477 F.2d 999 (3d Cir. 1973), *petition for cert. granted*, 42 U.S.L.W. 3653 (U.S. May 28, 1974) (No. 73-64).

(3) That 18 U.S.C. § 1955 is unconstitutional. We reject this contention on the authority of *United States v. Riehl*, 460 F.2d 454 (3d Cir. 1972).

It is ORDERED and ADJUDGED that the judgment of the district court is affirmed. No costs.

BY THE COURT:
JOHN J. GIBBONS,
Circuit Judge.

Attest:
THOMAS F. QUINN,
Clerk.

Dated: Jun. 11, 1974.

APPENDIX B

Order of Court of Appeals Below

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

v.

MARGARET RUTH PETRAGLIA, FRANK ANTHONY PULEO, NELLIE MARY PULEO.

No. 72-102 Criminal

MEMORANDUM AND ADJUDICATION

The defendants Margaret Ruth Petraglia, Frank Anthony Puleo and Nellie Mary Puleo were severed from the other defendants, *viz.*: Anthony Michael Grosso, Joseph Carmen Grosso, Jr., Samuel James Grosso and Philomena Viola, for the purpose of trial by reason of engagement of their counsel in a protracted trial in the Eastern District of Michigan at the time the entire case was called for trial on April 30, 1973. The other defendants, after approximately eight days of trial, were found guilty on the basis of the testimony of government witnesses and a large number of interceptions of telephonic communications (wire taps). During the course of the trial of the other defendants, the evidence introduced by the govern-

ment, including the wire taps, indicated strongly the guilt of these defendants.

These defendants have now, with the concurrence of counsel, entered into a stipulation as to which they have been personally interrogated by the court, agreeing to waive a jury trial and agreeing to the incorporation by reference of the testimony taken in the trial of the other defendants in United States v. Grosso, *et al.*, at the above number.

The court has further interrogated the defendants and their counsel as to whether they wish to introduce any evidence or take the testimony of any witnesses in their behalf or whether they wish to take the stand and testify themselves and the answers have all been in the negative. The court therefore considers the testimony closed. Upon careful consideration of the evidence offered in the trial of the other defendants with reference to those portions pertaining to the defendants Puleo and Petraglia most of which is fresh in the court's mind, the court has no hesitation in saying that it proved the guilt of these defendants beyond a reasonable doubt. In the memorandum and order denying a motion for new trial filed by the other defendants, the court said:

> "The convictions depend in part upon evidence obtained through interception of telephone calls (or wire taps) which were authorized under Title III of the Act covering such interceptions. 18 U.S.C. 2510, et seq. There was a large mass of evidence which clearly indicated beyond a reasonable doubt that these defendants for upwards of ten years had been engaged in a large-scale numbers operation providing for bets and payoffs upon the basis of numbers obtained through the daily transactions of the New York Stock Exchange

> and also other numbers based upon the results at certain race tracks. The conspiracy according to the evidence involved thousands of people and had been in substantially continuous operation during this period of time and had a gross revenue in excess of the minimum amount of $2000 per day demanded by the statute. In fact, the evidence indicated that the gross revenues of this operation amounted to more than $30,000,000 per year."

For these reasons, the court will enter an adjudication of guilty pursuant to Rule 23(c) of the Rules of Criminal Procedure. The adjudication will be in the form of a general finding, neither the government nor the defendant having requested the court to make special findings of fact. Counsel are to be congratulated upon working out this method of saving the time of the court and the attorneys and yet preserving defendants' rights to raise certain constitutional and statutory questions and objections to the testimony.

ADJUDICATION AND ORDER

And Now, to wit, November 26, 1973, the above case having been called for trial on November 26, 1973, and the defendants having waived jury trial and having stipulated that the case be submitted to the court on testimony heretofore taken in the case of the other defendants in United States v. Grosso, *et al.*, No. 72-102 Criminal, and the court having carefully considered the evidence with respect to the defendants Puleo and Petraglia as contained therein and having determined as set forth in the foregoing memorandum that the guilt of the defendants was therein proved beyond a reasonable doubt,

Appendix B—Order of Court of Appeals Below

IT IS ADJUDGED that the defendants, Margaret Ruth Petraglia, Frank Anthony Puleo and Nellie Mary Puleo be and hereby are found guilty upon both counts of the indictment as charged.

IT IS FURTHER ORDERED that a presentence report be prepared and that the defendants above named appear for sentence before the undersigned on Thursday, December 20, 1973, at 9:30 a. m.

IT IS FURTHER ORDERED that bonds of these defendants be continued pending sentence with the further condition attached thereto that they do not participate in any illegal gambling in any capacity whatsoever pending sentence.

(Illegible),
United States District Judge.

cc:

U. S. Attorney,
633 U. S. Courthouse 15219.

James K. O'Malley, Esq.,
1124 Frick Bldg. 15219.

Probation Office,
U. S. Courthouse 15219.

APPENDIX C

Statutes Involved

18 U.S.C. provides, in pertinent part:

§ 1955. Prohibition of illegal gambling businesses

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than $20,000 or imprisoned not more than five years, or both.

(b) As used in this section—

(1) "illegal gambling business" means a business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-2010

MARGARET RUTH PETRAGLIA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES

After a court trial on stipulated facts, petitioners were convicted of conducting an illegal gambling business involving five or more persons and of conspiring to commit that offense, in violation of 18 U.S.C. 1955 and 371.[1] Petitioner Petraglia was sentenced to concurrent three-year prison terms and fined $10,000 and $5,000, respectively on the two counts. Petitioner Nellie Mary Puleo was sentenced to concurrent terms of three years' imprisonment, with all but four months suspended, and was placed on three years' probation; in addition, she was fined $5,000 on each count. Petitioner Frank Anthony Puleo was given concurrent suspended three-year prison

[1]Petitioners' trial was severed from that of certain other co-defendants, whose petition is currently also before the Court in *Grosso, et al.* v. *United States,* No. 73-1412. The *Grosso* defendants were tried and adjudged guilty prior to petitioners' trial, and much of the evidence from that case was introduced in petitioners' trial by stipulation.

sentences and was placed on three years' probation; he was also fined $5,000 and $2,000 respectively on the two counts. The court of appeals affirmed (Pet. App. 5-6).

As discussed in the district court's opinion (Pet. App. 7-9), the evidence showed that petitioners and others were engaged in operating an illegal gambling enterprise whose gross revenues amounted to more than $30,000,000 per year. Petitioners' only contention is that, under "Wharton's Rule," it was improper to charge and punish them for both the substantive violation of Section 1955 and the conspiracy to commit that offense. As petitioners point out, the issue is presented in a similar factual situation in *Iannelli* v. *United States,* No. 73-64, certiorari granted May 28, 1974. Accordingly, it would be appropriate, as petitioners suggest, to defer disposition of this petition until after the decision in *Iannelli*, and then dispose of it in accordance with that decision.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1974.